

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3240 OF 1981

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI JANIMAL JETHANAND AND ORS.

VERSUS

ADDL. SPPEECIAL SECRETARY (APPEALS), REVENUE DEPTT.,
GUJ. STATE..

Appearance:

MR. G.R. UDHWANI, for the petitioners.

None present for the Respondents.

Coram: S.K. Keshote,J
Date of decision:04/10/96

C.A.V. JUDGMENT

The matter has arisen out of the proceedings initiated against the petitioner under the Urban Land (Ceiling & Regulations) Act, 1976, (hereinafter referred

to as the 'Act 1876'). It is really a sorry state of affairs prevailing in the State of Gujarat where the State or its functionaries have not taken any care whatsoever to file a reply to the Special Civil Application. Not only this, nobody has put appearance on behalf of the respondents in this Special Civil Application. In the absence of reply to the Special Civil Application, the averments made by the petitioner therein stood uncontroverted. The Act 1976 has been enacted so that the ceiling on the holdings of urban land is there and the surplus land be made available for allotment thereof to the landless persons. The object which is to be fulfilled or sought to be fulfilled, by enacting the aforesaid Act, calls attention of all concerned persons. The Parliament has enacted this Act for the purpose of providing the land to the landless persons and the State Government, on the other hand, has taken the land ceiling matters very casually and lightly, which is clearly exhibited from the fact of non filing of reply to this Special Civil Application and non presence of any one on its behalf alongwith the records of the case and worst is that even the Government Pleader is also not present. A question that arises in the mind of Court is whether the State Government really intends to enforce the Act aforesaid in its true spirit, object and purpose and in above circumstances, the reply is obviously in negative. This is not the only case of Urban Land Ceiling Act, in which the respondents have not filed the reply, but in most of the cases relating to the Urban Land Ceiling or Agricultural Land Ceiling Act, replies are not there. In absence of reply to the petition and non assistance from the respondents, though this Court could have adopted a course to allow this petition directly as it has not been contested, but it may be a dangerous proposition in many cases because people may manipulate things and non filing of the reply may be result thereof, and non contesting of the matter may also be the result thereof. Taking into consideration prevailing circumstances in our country, level of morals, character and honesty has to be looked into in the context thereof and if we go by that, then the proper course in such matters is to decide the matter on merits on the basis of whatever record is produced by the petitioner or otherwise available on record of the case.

2. The facts giving rise to the this Special Civil Application, in brief, are as under:

The petitioners, on 18th April 1972, jointly purchased the land admeasuring 1820 sq.mts. under a

registered sale-deed from one Sugnomal Uttamchand. Earlier to the execution of the registered sale-deed of the land, the petitioners and the vendor have entered into an agreement to sale on 18.3.72 and it is not in dispute that it was an unregistered document. Out of the sale consideration, only Rs.1,000/- has been paid as earnest money and possession of the land has been delivered to the petitioners by the vendor. The petitioners have come up with the case that they jointly purchased the property for their necessity and intention was to divide the plot of 2000 sq.yds. (1820 sq.mts.) into sub plots of 500 sq.yds. each. The Urban Land (Ceiling & Regulations) Act, 1976, came into force in the State of Gujarat from 17th February 1976 and the petitioners who were holding the land admeasuring 500 sq.yds. each were not governed under the provisions of the Act 1976 as their holdings of urban land not exceeded the ceiling of 1000 sq.mts. for the city of Ahmedabad prescribed under Section 4 of the Act 1976. The petitioners, what they stated in this Special Civil Application, were not required to file any statement u/s.6 of the said Act. Out of 2000 sq.yds. of land, the petitioners No.3 and 4 have put up construction of their residential houses in the area of about 1000 sq.yds., i.e. their share and remaining land of 1000 sq.yds. is open vacant land. The petitioners were intending to sell the said open vacant land and for that purpose, no objection certificate was prayed for by the petitioners before the competent authority. The competent authority, under its order annexure 'A' dated 16th March 1981, held that the petitioners possessed 672.26 sq.mts. of surplus land. The petitioners preferred an appeal against the aforesaid order before respondent No.1 and the appellate authority upheld the order of the competent authority. Hence this Special Civil Application.

3. Shri U.G. Udhwani, learned counsel for the petitioners made threefold submissions challenging the validity of the orders impugned in this Special Civil Application. He firstly contended that the petitioners are the co-owners of the land in dispute and as such, both the authorities below have committed serious illegality in holding that 672.26 sq.mts. of land is surplus land. In support of this contention, the learned counsel for the petitioners relied upon decision of this Court in the case of Durlabhji Dhanjibhai Patel (deleted) and Ors. v. Competent Authority and Dy. Collector & Anr., reported in 1996(1) GLH 714. He secondly contended that the petitioners have produced numerous documents in evidence in support of their case that the land in question belong to the four petitioners separately and

that each of them has 1/4th share in the said land, but the same has not been considered. The petitioners further have produced the document of Income tax assessment for the year 1971-72 and 1972-73, and the Income tax account to show and establish that each one of them had paid equal amount towards the sale price of the land in dispute because each one of them had 1/4th share therein, but these documents also have not been considered by the authorities below. Lastly it is contended that the petitioners have right to sale half of the land as they are not having any land in excess of the ceiling limit.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner.

5. Both the documents, annexures 'A' & 'B' are in a vernacular language and the learned counsel for the petitioners has given out translated version thereof during the course of arguments. In para-4 of this Special Civil Application, the petitioners have made a statement of fact that the documents enumerated therein have been produced before the authorities in evidence and in support of their case that the land in question belong to them separately and each of them have 1/4th share therein. In para-5 of the petition also, the petitioners have made a statement that the Income tax assessments made of the petitioners and the accounts thereof in which they are shown as purchasers of the land in equal share, have also not been considered by the authorities. From the translated version which has been given by the learned counsel for the petitioner, I find sufficient merits in the contention of the learned counsel for the petitioner that the material documentary evidence produced by the petitioners in support of their case has not been considered by the authorities. The learned counsel for the petitioner emphatically stated that the documents have not been even referred in the judgment what to say to consider the same. Non consideration of documents produced by the parties on record is a serious procedural illegality in the proceedings and the same deserve to be corrected. Whether the evidence produced by the petitioners in support of their case has to be accepted or not is not the matter here, but when the evidence has been produced before the authorities, it has to be considered. The matter is different what value should be given to it or whether it should be accepted or not. In case evidence produced by the petitioners is not acceptable, then reasons are to be given, but it is a case where the authorities below have not cared to see

and look into the documentary evidence produced by the petitioner. It is certainly an error apparent on the face of the order of the authorities below and as such, the orders made by them and impugned in this Special Civil Application cannot be allowed to stand. In view of this finding, I do not consider it to be appropriate to go on other questions raised by the learned counsel for the petitioner in this Special Civil Application.

5. In the result, this Special Civil Application succeeds and the order of the respondent No.1 and 2 annexures 'A' and 'B' dated 16th March 1981 and 12th October 1980 respectively are quashed and set aside and the matter is remanded back to respondent No.2 with directions to decide the same afresh after taking into consideration all evidence which have been produced by the petitioners on record. However, the petitioners are directed to maintain status-quo in respect of the land in dispute till the remanded matter is decided by respondent No.2. It is a ceiling matter and as such, it has to be decided expeditiously. The petitioners are directed to present themselves either personally or through their representative before the respondent No.2 on 4th November 1996. They will produce certified copy of this order before the said authority on the said date and the authority concerned will decide the matter within three months next thereafter. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)